

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Civil Action No.: 04-11939-JGD

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MICHAEL J. WHALON,

Plaintiff,

v.

CHRISTY'S OF CAPE COD, LLC,

Defendant.

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**BRIEF JOINT STATEMENT**

Plaintiff Michael J. Whalon ("Whalon") and Defendant Christy's of Cape Cod, LLC ("Christy's") (collectively, "the Parties") jointly submit this Statement pursuant to the Court's Order of July 28, 2005 extending discovery and rescheduling the Status Conference in this matter.

The Court's attention is called to the fact that the parties have filed a Joint Motion to Reschedule the Status Conference in this matter, currently set for October 11, 2005 at 2:00 p.m. Should the Court grant this Motion, the Parties will revise this Brief Joint Statement prior to any rescheduled Status Conference.

As of this date, the Parties can report the following:

1. Status of the Case: Fact discovery is ongoing. The deposition of the Plaintiff commenced on August 7, 2005, and is scheduled to be continued on October 11, 2005. The deposition of Patrick McKeown, Executive Vice President of Defendant Christy's of Cape Cod, LLC, is scheduled for early November 2005. The Parties have completed Initial Disclosures and have exchanged written discovery, including

Interrogatories and Requests for Production of Documents. The Plaintiff has provided a response to Defendant's Request for Production of Documents, and is finalizing Answers to the Defendant's Interrogatories. The Defendant is finalizing its response to Plaintiff's discovery requests, which were served on September 6, 2005.

2. Scheduling Remainder of the Case: The Parties continue to believe that the phased discovery program established by the Court at the initial Scheduling Conference is desirable, although the dates with respect to the completion of fact discovery and disclosure of experts may need to be adjusted slightly at the Status Conference. The Parties will confer prior to the Conference, and will be prepared to submit their respective (or agreed upon) positions with respect to modification of the current Scheduling Order.

Additionally, the Court is reminded that the Scheduling Order in this case was designed by the Court to permit an early assessment of the case, and for this reason does not extend beyond the disclosure of expert reports. The Parties submit that, following completion of the depositions of the Plaintiff and Mr. McKeown, the Parties should be in a better position to decide upon the use of mediation or another ADR mechanism. If ADR is not used at this point in the case, the Parties submit that it would now be appropriate for the Court to expand the Scheduling Order to include dates for Summary Judgment Motions, Pretrial Conference, and Trial. Again, the parties will confer prior to the Conference, and will be prepared to submit their respective (or agreed upon) positions with respect to these dates.

3. Use of Alternative Dispute Resolution Programs: The Parties

continue to discuss the possible use of Alternative Dispute Resolution programs, most notably mediation. Neither party has rejected the possibility of ADR as a mechanism of resolving this case. Both parties, however, believe that additional fact discovery, including at least the deposition of the Plaintiff and Mr. McKeown, needs to be completed prior to any meaningful discussion on the use of ADR.

Dated: October 6, 2005

Respectfully submitted.

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